

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In re: Bair Hugger Forced Air Warming
Products Liability Litigation

MDL No. 2666
(JNE/FLN)

This Document Relates to All Actions

**JOINT MOTION REGARDING
CONTINUED SEALING**

Documents have been filed under temporary seal in connection with the following motion:

Plaintiffs Motion for Leave to Amend the Master Long Form and (Doc. No.
Master Short Form Complaints to Include Claims for Punitive 307)
Damages

Pursuant to LR 5.6, the parties submit this Joint Motion Regarding Continued Sealing.

DKT. NO.	DESCRIPTION OF DOCUMENT	MARK "X" IN APPLICABLE COLUMN			NONPARTY THAT DESIGNATED DOC. CONFIDENTIAL (IF ANY)	REASON WHY DOCUMENT SHOULD REMAIN SEALED OR BE UNSEALED ⁱ
		Parties Agree Doc. Should Remain Sealed	Parties Agree Doc. Should Be Unsealed	Parties Disagree		
308	Plaintiffs' Exhibit 1 – Proposed Second Amended Master Long Form Complaint including Punitive Damages			X	Not Applicable.	<p>Plaintiffs' position. Plaintiffs respectfully submit all of the documents should be unsealed in light of the public interest in knowing the facts surrounding Defendants willful conduct.</p> <p>Defendants' position. Plaintiffs' proposed Amended Master Long Form Complaint references the content of internal, non-public documents that were designated Confidential by Defendants under the Protective Order, PTO 7 (ECF No. 39). Defendants propose that the proposed Complaint remain under seal unless Plaintiffs' motion is granted. Defendants do not oppose filing of a redacted version of the proposed Complaint that redacts information that remains under seal.</p>
311	Sealed Memorandum in Support of Motion to Amend Master Long Form and Master Short Form Complaints to			X	Not Applicable.	

	Include Punitive Damages Claim					
316	Plaintiffs' Exhibit A – Report of Yadin David			X	Not Applicable.	<p>Plaintiffs' position. Plaintiffs respectfully submit all of the documents should be unsealed in light of the public interest in knowing the facts surrounding Defendants willful conduct.</p> <p>Defendants' position. The redacted portions of Dr. David's report refer heavily to Defendants' internal documents that were designated as Confidential under PTO 7 because they contained nonpublic technical information, including reports and discussion of testing, that is of competitive significance. Defendants have no objection to unredacting pages 1-14 of Dr. David's report.</p>
317	Plaintiffs' Exhibit E – Report of Jonathan Samet		X		Not Applicable.	
319	Plaintiffs' Exhibit 1 – 3MBH00047858		X		Not Applicable.	
321	Plaintiffs' Exhibit 2 – 3MBH00047382		X		Not Applicable.	
322	Plaintiffs' Exhibit 3 – Deposition of Gary Maharaj		X		Not Applicable.	
323	Plaintiffs' Exhibit 5 – Deposition of Corporate Representative Al Van Duren		X		Not Applicable.	
324	Plaintiffs' Exhibit 6 – Deposition of Teri Woodwick Sides		X		Not Applicable.	

325	Plaintiffs' Exhibit 7 – Deposition of David Westlin		X		Not Applicable.	
326	Plaintiffs' Exhibit 8 – Deposition of Karl Zgoda		X		Not Applicable.	
327	Plaintiffs' Exhibit 10 – 3MBH00022373		X		Not Applicable.	
328	Plaintiffs' Exhibit 11 – 3MBH01735812		X		Not Applicable.	
329	Plaintiffs' Exhibit 12 – 3MBH01031246			X	Not Applicable.	<p>Plaintiffs' position. Plaintiffs respectfully submit all of the documents should be unsealed in light of the public interest in knowing the facts surrounding Defendants willful conduct.</p> <p>Defendants' position. This document should remain under seal. This document is notes of an internal Arizant meeting to discuss regulatory issues relating to the Bair Paws and Polar Air products. Neither product is at issue in this litigation. Defendants designated this document as Confidential under PTO 7 because it contains nonpublic technical information of competitive significance to Defendants.</p>
330	Plaintiffs' Exhibit 13 – 3MBH00048067		X		Not Applicable.	
331	Plaintiffs' Exhibit 14 – 3MBH00132832		X		Not Applicable.	
332	Plaintiffs' Exhibit 15 – 3MBH00126140		X		Not Applicable.	
333	Plaintiffs' Exhibit 16 –		X		Not Applicable.	

	Deposition of Dr. Daniel Sessler					
334	Plaintiffs' Exhibit 18 – 3MBH00024633		X		Not Applicable.	
335	Plaintiffs' Exhibit 19 – 3MBH00024678		X		Not Applicable.	
336	Plaintiffs' Exhibit 20 – 3MBH00008941		X		Not Applicable.	
337	Plaintiffs' Exhibit 21 – 3MBH0022625			X	Not Applicable.	<p>Plaintiffs' position. Plaintiffs respectfully submit all of the documents should be unsealed in light of the public interest in knowing the facts surrounding Defendants willful conduct.</p> <p>Defendants' position. This document is an internal Arizant presentation summarizing “brainstorming” of ideas for potential design changes to the Bair Hugger system. Defendants designated this document as Confidential under PTO 7 because it contains nonpublic technical information of competitive significance to Defendants. Public disclosure could cause competitive harm to 3M by providing competitors with internal technical information and considerations.</p>
338	Plaintiffs' Exhibit 22 – 3MBH00022877		X		Not Applicable.	
339	Plaintiffs' Exhibit 23 – 3MBH00025006		X		Not Applicable.	
340	Plaintiffs' Exhibit 24 –			X	Not Applicable.	Plaintiffs' position. Plaintiffs

	3MBH01617179					<p>respectfully submit all of the documents should be unsealed in light of the public interest in knowing the facts surrounding Defendants willful conduct.</p> <p>Defendants' position. This document is an internal 3N document reflecting internal scientific and technical discussions. Defendants designated this document as Confidential under PTO 7 because it contains nonpublic technical and planning information of competitive significance to Defendants.</p>
341	Plaintiffs' Exhibit 25 – Deposition of Mark Scott		X		Not Applicable.	
342	Plaintiffs' Exhibit 26 – 3MBH0054396			X	Not Applicable.	<p>Plaintiffs' position. Plaintiffs respectfully submit all of the documents should be unsealed in light of the public interest in knowing the facts surrounding Defendants willful conduct.</p> <p>Defendants' position. This document should remain under seal. This document is an internal 3M email chain discussing ideas for design changes to the Bair Hugger system. Defendants designated this document as Confidential under PTO 7 because it contains nonpublic</p>

						technical information of competitive significance to Defendants. Public disclosure could cause competitive harm to 3M by providing competitors with internal technical information and considerations.
343	Plaintiffs' Exhibit 27 – 3MBH00630074			X	Not Applicable.	<p>Plaintiffs' position. Plaintiffs respectfully submit all of the documents should be unsealed in light of the public interest in knowing the facts surrounding Defendants willful conduct.</p> <p>Defendants' position. This document should remain under seal. This document is an internal 3M presentation summarizing engineers' "ideation" (that is, brainstorming) of ideas for potential design changes to the Bair Hugger system. Defendants designated this document as Confidential under PTO 7 because it contains nonpublic technical information of competitive significance to Defendants. Public disclosure could cause competitive harm to 3M by providing competitors with internal technical information and considerations.</p>
344	Plaintiffs' Exhibit 28 – 3MBH01922062			X	Not Applicable.	<p>Plaintiffs' position. Plaintiffs respectfully submit all of the documents should be unsealed in light of the public interest in knowing the facts surrounding Defendants willful conduct.</p>

						<p>Defendants' position. This document should remain under seal. This exchange between 3M engineers and an engineer at 3rd party Pentair was designed as Confidential under PTO 7 because there is a Confidentiality Agreement between 3M and Pentair that prohibits 3M from disclosing the type of information contained in this document.</p>
345	Plaintiffs' Exhibit 31 – 3MBH00031537			X	Not Applicable.	<p>Plaintiffs' position. Plaintiffs respectfully submit all of the documents should be unsealed in light of the public interest in knowing the facts surrounding Defendants willful conduct.</p> <p>Defendants' position. This document should remain under seal. This document is an internal Arizant strategic planning document. Defendants designated this document as Confidential under PTO 7 because it contains strategic planning information of competitive significance.</p>
346	Plaintiffs' Exhibit 32 – Deposition of Troy Bergstrom		X		Not Applicable.	
347	Plaintiffs' Exhibit 40 – 3MBH00001336			X	Not Applicable.	<p>Plaintiffs' position. Plaintiffs respectfully submit all of the documents should be unsealed in light of the public interest in knowing the facts surrounding Defendants</p>

						<p>willful conduct.</p> <p>Defendants' position. This document should remain under seal. This document is an internal draft of talking points for Arizant sales representatives from 2010. It was labeled "Confidential—Not for external distribution" at the time. It is not a final version whose content may have been publicly disclosed. Defendants designated this document as Confidential under PTO 7 because it contains strategic planning information of competitive significance.</p>
348	Plaintiffs' Exhibit 41 – 3MBH01223897		X		Not Applicable.	
349	Plaintiffs' Exhibit 42 – Moretti study		X		Not Applicable.	
350	Plaintiffs' Exhibit 43 – 3MBH00044027		X		Not Applicable.	
351	Plaintiffs' Exhibit 44 – 3MBH00580475		X		Not Applicable.	
352	Plaintiffs' Exhibit 45 – 3MBH00050770		X		Not Applicable.	
353	Plaintiffs' Exhibit 46 – 3MBH00044027		X		Not Applicable.	
354	Plaintiffs' Exhibit 47 – 3MBH00024733		X		Not Applicable.	
355	Plaintiffs' Exhibit 48 – 3MBH00001557		X		Not Applicable.	
356	Plaintiffs' Exhibit 49 – 3MBH00050756		X		Not Applicable.	

357	Plaintiffs' Exhibit 50 – 3MBH01223923		X		Not Applicable.	
358	Plaintiffs' Exhibit 51 – 3MBH00024809		X		Not Applicable.	
360	Plaintiffs' Exhibit 52 – 3MBH01224622		X		Not Applicable.	
361	Plaintiffs' Exhibit 53 – 3MBH00130429		X		Not Applicable.	
362	Plaintiffs' Exhibit 54 – 3MBH00083780		X		Not Applicable.	
363	Plaintiffs' Exhibit 55 – 3MBH01211442		X		Not Applicable.	
364	Plaintiffs' Exhibit 56 – Deposition of Dr Paul McGovern		X		Not Applicable.	
365	Plaintiffs' Exhibit 57 – 3MBH00051040		X		Not Applicable.	
366	Plaintiffs' Exhibit 58 – Deposition of John Rock		X		Not Applicable.	
367	Plaintiffs' Exhibit 59 – 3MBH00051252		X		Not Applicable.	
368	Plaintiffs' Exhibit 60 – 3MBH00575107		X		Not Applicable.	
369	Plaintiffs' Exhibit 61 – 3MBH00575251		X		Not Applicable.	
370	Plaintiffs' Exhibit 62 – 3MBH00132501		X		Not Applicable.	
371	Plaintiffs' Exhibit 63 – 3MBH01619270		X		Not Applicable.	
372	Plaintiffs' Exhibit 64 – 3MBH0055876		X		Not Applicable.	
373	Plaintiffs' Exhibit 65 – 3MBH00134035		X		Not Applicable.	
374	Plaintiffs' Exhibit 66 –		X		Not Applicable.	

	3MBH00107719					
375	Plaintiffs' Exhibit 67 – 3MBH01330587		X		Not Applicable.	
376	Plaintiffs' Exhibit 68 – Deposition of Dr. Michelle Hulse-Stevens		X		Not Applicable.	
377	Plaintiffs' Exhibit 69 – 3MBH00053467			X	Not Applicable.	<p>Plaintiffs' position. Plaintiffs respectfully submit all of the documents should be unsealed in light of the public interest in knowing the facts surrounding Defendants willful conduct. With respect to this document in particular, Defendants understandably don't want the public to learn about their "War Games" meeting and tactics to continue to suppress facts. There is nothing akin to a trade secret reflected in this document and given the public interest in these proceedings, plaintiffs respectfully submit this document should be unsealed.</p> <p>Defendants' position. This document should remain under seal. This document reflects notes of 3M employees from a strategic planning discussion. Defendants designated this document as Confidential under PTO 7 because it contains strategic planning information of competitive significance.</p>
378	Plaintiffs' Exhibit 70 – Deposition of Jana Stender		X		Not Applicable.	

379	Plaintiffs' Exhibit 71 – 3MBH00024680		X		Not Applicable.	
380	Plaintiffs' Exhibit 72 – 3MBH00002792		X		Not Applicable.	
381	Plaintiffs' Exhibit 73 – 3MBH0125823		X		Not Applicable.	
382	Plaintiffs' Exhibit 74 – 3MBH00005744			X	Not Applicable.	<p>Plaintiffs' position. Plaintiffs respectfully submit all of the documents should be unsealed in light of the public interest in knowing the facts surrounding Defendants willful conduct.</p> <p>Defendants' position. This document should remain under seal. This is an internal Arizant strategic planning document. Defendants designated this document as Confidential under PTO 7 because it contains strategic planning information of competitive significance.</p>
383	Plaintiffs' Exhibit 75 – 3MBH00042660		X		Not Applicable.	
384	Plaintiffs' Exhibit 76 – 3MBH00108244		X		Not Applicable.	
385	Plaintiffs' Exhibit 77 – 3MBH00544754			X	Not Applicable.	<p>Plaintiffs' position. Plaintiffs respectfully submit all of the documents should be unsealed in light of the public interest in knowing the facts surrounding Defendants willful conduct.</p> <p>Defendants' position. This document should remain under seal.</p>

						This document, entitled "Competitive Outline_v1.pptx," reflects internal correspondence among 3M employees relating to strategic planning. Defendants designated this document as Confidential under PTO 7 because it contains strategic planning information of competitive significance.
386	Plaintiffs' Exhibit 78 – 3MBH02237658		X		Not Applicable.	
387	Plaintiffs' Exhibit 79 – 3MBH00050932		X		Not Applicable.	
439	Defendants' Exhibit 16 – test report prepared by BIOTEST Laboratories (3MBH00761308-309)		X		Not Applicable.	
440	Defendants' Exhibit 17 - test report prepared by BIOTEST Laboratories (3MBH00761310-311)		X		Not Applicable.	
441	Defendants' Exhibit 20 – Patient Warming Formal Test Report dated August 25, 2016			X	Not Applicable.	<p>Plaintiffs' position. Plaintiffs respectfully submit all of the documents should be unsealed in light of the public interest in knowing the facts surrounding Defendants willful conduct.</p> <p>Defendants' position. This document should remain under seal. This is an internal 3M testing report. Defendants designated this document as Confidential under PTO 7 because it contains nonpublic</p>

						technical information of competitive significance to Defendants. Public disclosure could cause competitive harm to 3M by providing competitors with internal technical information and considerations.
442	Defendants' Exhibit 24 – Document entitled “Ion Armour Thoughts.”		X		Not Applicable.	

Dated: June 1, 2017

Respectfully submitted,

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ⁱ This explanation should be very brief. For example:

1. contains information designated as confidential by a nonparty
2. contains information designated as confidential under a non-disclosure agreement between plaintiff and nonparty
3. contains information designated as confidential under a protective order issued in this case [Docket No. 39]
4. discovery materials filed in connection with a motion under Fed R. Civ. P. 37
5. reveals trade secrets of defendant
6. reveals proprietary business methods of plaintiff
7. confidential financial records
8. confidential medical records
9. contains termination information regarding former employees of defendant
10. reveals information regarding a minor
11. contains information ordered sealed by the court on DATE [Docket No. XX]